

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2248

SPONSOR: Governmental Oversight and Productivity Committee, Senator Wasserman Schultz and others

SUBJECT: Charitable Youth Organizations

DATE: April 14, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/1 amendment
2.	White	Wilson	GO	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Currently, chs. 255 and 287, F.S., require state and local governments to utilize competitive bidding procedures when purchasing goods and services, with certain exceptions. The committee substitute adds an additional exception. Under the bill, specified not-for-profit charitable youth organizations may receive no-bid public service contracts if the following conditions are satisfied:

- The contract may not exceed the annual sum of \$250,000.
- The organization must be a not-for-profit corporation.
- The corporate charter must state that the corporation is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.
- Administrative salaries and benefits of the corporation may not exceed 15 percent of gross revenues, excluding field supervisors' salaries and benefits.
- The contract must be approved by state agency personnel or the governing body of a political subdivision.
- No subcontracting may be implemented.
- Payment must be production-based.
- The contractor must institute a drug-free workplace program.
- The contractor must agree to be subject to Auditor General review.
- The contractor may not be in violation of specified public entity crimes or discrimination laws.

This bill creates a new section of the Florida Statutes.

## II. Present Situation:

Chapter 255, F.S., relates to public property and publicly-owned buildings. This chapter provides competitive procurement requirements that include the following:

- Counties, municipalities, special districts, and other political subdivisions must competitively award a contract for the construction or improvement of a public building, structure, or other public construction work that exceeds the cost of \$200,000.<sup>1</sup>
- Local governments must competitively award a contract for electrical work that exceeds the cost of \$50,000.<sup>2</sup>

Chapter 287, F.S., requires competitive procurement by state agencies of commodities<sup>3</sup> and contractual services.<sup>4</sup> An agency is defined as “the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization . . . of the executive branch of state government,” but does not include state universities.<sup>5</sup>

An agency contracting for the purchase of commodities or contractual services in excess of \$25,000, must use one of the following procurement methods:

- Invitation to bid (ITB): The agency must issue an ITB that details the commodities or services sought, the time and date for receipt of bids and of the public opening, all contractual terms, and the contractual terms and conditions, including the criteria to be used in determining acceptability of the bid. The contract must be awarded to the lowest responsible and responsive bidder.<sup>6</sup>
- Request for proposals (RFP): If the agency determines in writing that the use of an ITB is not practicable, it may issue a RFP that identifies the commodities or services sought, the time and date for receipt of proposals and of the public opening, and the contractual terms and conditions, including the criteria to be used in determining acceptability of the proposal.<sup>7</sup>
- Invitation to negotiate (ITN): If the agency determines in writing that use of an ITB or RFP will not result in the best value to the state, the agency may use an ITN that includes a statement of the commodities or services sought, the time and date for receipt of replies and of the public opening, and all terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability of the reply.<sup>8</sup>

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<sup>1</sup> Section 255.20(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Commodities are supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including portable structures less than 5,000 square feet. Excluded are commodities purchased for resale, prescriptions and medical devices required by health care providers, and printing pursuant to s. 283.33, F.S. Section 287.012(5), F.S.

<sup>4</sup> Contractual service is an independent contractor’s rendering of its time and effort, rather than the furnishing of specific commodities. Excluded are construction contracts entered pursuant to ch. 255, F.S. Section 287.012(9), F.S.

<sup>5</sup> Section 287.012(1), F.S.

<sup>6</sup> Section 287.057(1), F.S.

<sup>7</sup> Section 287.057(2), F.S.

<sup>8</sup> Section 287.057(3), F.S.

To allow for circumstances wherein procurement of commodities or services with an ITB, RFP, or ITN is not possible, ch. 287, F.S., also permits emergency<sup>9</sup> and single source procurements.<sup>10</sup> Further, the chapter exempts the following contractual services from its competitive procurement requirements: artistic services, academic program reviews, lectures by individuals, auditing services, legal services, health services, services provided to persons with mental or physical disabilities by not-for profit corporations, certain Medicaid services, family placement services, certain prevention services, training and education services provided to injured employees, contracts for the construction and maintenance of state highways and other roads, services provided by governmental agencies, and certain continuing educational events offered to the public.<sup>11</sup>

Chapter 337, F.S., specifically governs the Department of Transportation's (DOT's) procurement practices and requires the DOT with specified exceptions to comply with ch. 287, F.S., when purchasing commodities.<sup>12</sup> Further, the DOT is required to competitively award all contracts for the construction and maintenance of state roads.<sup>13</sup>

Chapter 335, F.S., permits the DOT to enter contracts with counties and municipalities within their respective boundaries for the performance of "routine maintenance work" on the State Highway System.<sup>14</sup> The county or municipality is entitled to reimbursement from the DOT as provided in the contract.<sup>15</sup>

In 1997, the Legislature created in ch. 334, F.S., the youth work experience program to provide young men and women an opportunity to obtain public service work and training experience that protects the state's valuable resources and encourages participation in other community enhancement projects.<sup>16</sup> Under this program, the DOT is authorized to contract with public agencies and nonprofit organizations for construction and maintenance work on transportation-related facilities by youths enrolled in a youth work experience program, notwithstanding the requirements of chs. 287 and 337, F.S.<sup>17</sup> The total amount of such contracts may not exceed the amount annually appropriated by the Legislature for this program.<sup>18</sup>

### III. Effect of Proposed Changes:

Currently, chs. 255 and 287, F.S., require state and local governments to utilize competitive bidding procedures when purchasing goods and services, with certain exceptions. This bill creates a new section within ch. 255, F.S., to add an additional exception that permits specified not-for-profit charitable youth organizations to receive no-bid public service contracts if the following conditions are satisfied:

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<sup>9</sup> Section 287.057(5)(a), F.S.

<sup>10</sup> Section 287.057(5)(c), F.S.

<sup>11</sup> Section 287.057(5)(f)-(g), F.S.

<sup>12</sup> Section 337.02(1), F.S.

<sup>13</sup> Section 337.11, F.S.

<sup>14</sup> Section 335.055(1), F.S.

<sup>15</sup> Section 335.055(3), F.S.

<sup>16</sup> Chapter 97-280, s. 13, L.O.F., codified as amended at s. 334.351, F.S.

<sup>17</sup> Section 334.351, F.S.

<sup>18</sup> *Id.*

- The contract may not exceed the annual sum of \$250,000.
- The organization must be a not-for-profit corporation pursuant to ch. 617, F.S., and s. 501(c)(3) of the Internal Revenue Code.
- The corporate charter of the organization must state that it is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.
- Administrative salaries and benefits of the corporation may not exceed 15 percent of gross revenues, excluding field supervisors' salaries and benefits.
- The contract must be approved by state agency personnel or the governing body of a political subdivision.
- No subcontracting may be implemented and all labor must be performed exclusively by at-risk youth and their direct supervisors.
- Payment must be production-based.
- The contractor must institute a drug-free workplace program substantially in compliance with s. 287.087, F.S.
- The contractor must agree to be subject to Auditor General review.
- The contractor may not be in violation of ss. 287.132 through 287.134, F.S., which proscribe the state from contracting with persons convicted of public entity crimes or found to have violated specified discrimination laws.

Further, the bill provides that a court may terminate a contract that does not meet the section's requirements, but shall not require disgorgement of monies earned for goods or services actually delivered or supplied.

The bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The bill provides an additional exemption to the competitive bidding requirements of chs. 255 and 287, F.S. The fiscal impact of any savings that might be foregone due to a lack of competitive bidding is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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